

IN THE SUPREME COURT OF NEW ZEALAND

SC 67/2017
[2017] NZSC 128

BETWEEN TANIA JOY LAMB
Applicant

AND THE ATTORNEY-GENERAL
Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person
S J Leslie and M Deligiannis for Respondent

Judgment: 29 August 2017

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2,500 to the respondent.**
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REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal.¹ In that judgment, the Court allowed an appeal against a decision of the High Court,² granting the applicant an extension of time to seek a review of a decision of an Associate Judge striking out her claim against the respondent.³

[2] The background is set out in the Court of Appeal decision. For present purposes, the salient facts are:

- (a) The applicant commenced proceedings against MidCentral District Health Board in September 2014 in respect of the care she had

¹ *Attorney-General v Lamb* [2017] NZCA 236 (Kós P, French and Williams JJ) [*Lamb* (CA)].

² *Lamb v Attorney-General* [2016] NZHC 849 (Mallon J) [*Lamb* (HC)].

³ *Lamb v Attorney-General* [2015] NZHC 2066 (Associate Judge Smith).

received at Palmerston North Hospital in 1977 after she was injured in a car accident. She claimed for breach of contract, negligence and breach of fiduciary duty and sought exemplary damages. In February 2015 the Attorney-General was substituted for MidCentral District Health Board as defendant pursuant to a direction of the Court.

- (b) The basis of the applicant's claim was that she said her care at Palmerston North Hospital after her 1977 accident was inadequate because no CT scan was done and no neurological assessment was undertaken. This, she says, resulted in partial paralysis. She said she did not find out about the inadequacy of her care until October or November 2008 when she first saw medical records relating to her treatment in 1977.
- (c) The applicant has accident compensation cover. In February 2009 the Accident Compensation Corporation (ACC) denied her claim for further cover for the injury resulting from the allegedly inadequate treatment. The applicant's appeal in the District Court failed: the Judge found that her entitlement to cover was the same whether it was in respect of the injury from the car accident or injury from the allegedly defective treatment, rendering moot the claim for compensation in relation to the injury that she says resulted from the inadequate treatment.⁴
- (d) Associate Judge Smith struck out the applicant's exemplary damages claim on the basis that it was time-barred under the Limitation Act 1950 and also on the basis that the statement of claim did not allege facts on which a claim for exemplary damages could be based. The contract claim and negligence claim were clearly time-barred and the breach of fiduciary duty claim was time-barred by analogy.
- (e) The applicant sought a review of this decision but filed her application for review nine weeks late. She indicated she wished to make a new

⁴ *Lamb v Accident Compensation Corp* [2011] NZACC 156 (Judge D A Ongley).

argument that had not been advanced before the Associate Judge, to the effect that her appeal to the District Court against ACC's decision to decline cover for her injury resulting from inadequate treatment, which was brought in February 2010, was an "action" pursuing her claim against the respondent and, because it was within time, this meant the claim against the respondent for exemplary damages was not statute barred. Mallon J expressed some doubt about this but, as she had not heard full argument on the new point, she considered it was better that it be aired in a review hearing, and granted the extension of time.⁵

[3] The Court of Appeal heard full argument on the new argument set out at [2](e) above and was clear that the appeal against the refusal of cover by the ACC could not be said to amount to an action pursuing the exemplary damages claim.⁶ It was noted that the ACC appeal and the present proceedings had different respondents (the respondent to the ACC appeal was ACC; the respondent in the exemplary damages claim is the Attorney-General), involved different causes of action (the ACC appeal was an appeal in relation to ACC cover; the present claim is a damages claim) and were commenced in different tribunals (the ACC appeal was in the District Court, whereas the present claim was commenced in the High Court).⁷ The Court concluded that, as there was no doubt that the applicant's claim was statute barred, the extension of time should not have been given. It allowed the appeal and reinstated the order striking out the claim.⁸

[4] The applicant says that leave should be given because the case involves a point of general or public importance. We do not accept that that is the case. Rather, the substantive legal point as to the application of the Limitation Act 1950 is specific to the facts of the present case and there is nothing in the material before the Court showing sufficient doubt about the correctness of the decision to justify the granting of leave.

⁵ *Lamb* (HC), above n 2, at [16]–[17].

⁶ *Lamb* (CA), above n 1, at [18].

⁷ At [23].

⁸ At [24].

[5] The application for leave to appeal is therefore dismissed with costs of \$2,500 to the respondent.

Solicitors:
Crown Law Office, Wellington for Respondent